



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110912579-1627-01]

RIN 0648-BB43

Atlantic Highly Migratory Species; Update to Information on the Effective Date of Atlantic Smoothhound Shark Fishery Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is updating the anticipated effective date of smoothhound shark management measures implemented in the Final Rule for Amendment 3 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) that published on June 1, 2010, and were corrected on August 17, 2010. These measures originally were to be effective around April 2012, before the beginning of the 2012 fishing year. However, the recently enacted Shark Conservation Act of 2010 requires NMFS to re-evaluate its shark management measures. The effective date will therefore be later than originally thought to fully

consider the Shark Conservation Act implications and to allow time for the Section 7 consultation under the Endangered Species Act (ESA) to be completed. This rule also removes and reserves the smoothhound shark regulations. These sections will be returned, with amendments as needed, in a final rule that implements both the smoothhound shark sections of the Shark Conservation Act and any requirements of the Section 7 consultation regarding smoothhound sharks.

DATES: The rule is effective [insert date 30 days after date of publication in the Federal Register]. The amendments to § 635.21 (e) (3) (i), § 635.24 (a) (7), and § 635.71(d) (18), published at 76 FR 49379, August 10, 2011, are withdrawn, effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Steve Durkee at 202-670-6637 or Karyl Brewster-Geisz at 301-427-8503; (fax) 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635, issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

The regulatory identification number (RIN) for Amendment 3

to the 2006 Consolidated HMS FMP was prematurely closed. The RIN for this action is formally tied to the closed RIN for Amendment 3, 0648-AW65.

Amendment 3 (75 FR 30484, June 1, 2010; corrected by 75 FR 50715, August 17, 2010) will bring smoothhound sharks under Federal management. The smoothhound shark complex consists of smooth dogfish (*Mustelus canis*) and the Florida smoothhound (*Mustelus norrisi*). In Amendment 3, NMFS determined that smoothhound sharks are oceanic sharks that should be managed under the Secretary's authority because of their wide distribution and because their range extends into the jurisdictions of more than one of the five Atlantic fishery management councils. NMFS noted that, based on existing data, the smoothhound shark fishery was substantial, with average annual landings of 431 mt dw, which would rank among the highest for any species of shark managed by NMFS. Accordingly, NMFS determined that sound, science-based conservation and management was necessary to provide for the long-term sustainable yield of the stock.

Most smoothhound shark catch occurs with gillnet and trawl gear. In Amendment 3, NMFS stated that managing the species using uniform conservation and management measures developed and

implemented through an FMP in accordance with the procedures set forth in the Magnuson-Stevens Act would better engage fishermen in developing conservation measures affecting the fishery. It would become increasingly difficult for NMFS to determine if prescriptive conservation and management measures, through future FMP amendments and/or regulatory changes, were needed without initial smoothhound management measures in place to collect critical data through Amendment 3.

The final rule implementing Amendment 3 published in June 2010, but the effective date for all smoothhound shark management measures was delayed to provide time for the NMFS Southeast Regional Office of Protected Resources to finalize a Biological Opinion (BiOp) on the proposed Amendment 3 measures for smoothhound effects on ESA-listed turtles and the northern right whale. Time was also needed for NMFS to perform outreach to a new set of constituents and to implement a new commercial smoothhound fishing permit (including Office of Management and Budget approval). In the final rule implementing Amendment 3, NMFS stated that a document would be published in the Federal Register announcing the effective date of those provisions once the Office of Management and Budget (OMB) approved information collection requirements, as required under the Paperwork

Reduction Act (PRA). Furthermore, NMFS stated that the effective date would likely be before the start of the 2012 fishing season for smoothhounds (approximately April 1, 2012).

Since publication of the final rule implementing Amendment 3, the Shark Conservation Act of 2010 (Public Law 111-348) became law. This legislation directly impacts the smoothhound shark fishery. Specifically, it amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to provide greater protection for sharks landed in or imported into the United States. Among the provisions are two requirements that affect domestic shark management. One provision amends the Magnuson-Stevens Act to require that all sharks landed in the United States be maintained with the fins naturally-attached to the carcass through offloading. The second provision is labeled as a "savings clause" and reads: "The amendments made by subsection (a) do not apply to an individual engaged in commercial fishing for smooth dogfish (Mustelus canis) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total

weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board."

Since NMFS needs to complete ESA consultation for the measures proposed for smoothhound sharks, and because the Agency needs to consider and implement congressionally-mandated smoothhound fishery management measures, NMFS is postponing the anticipated effective date of the Amendment 3 smoothhound management measures. The Agency no longer anticipates an effective date of April 1, 2012. Instead, NMFS anticipates the date will fall on the effective date of the measures in the forthcoming final rule to implement 2010 Shark Conservation Act smoothhound provisions, and only after ESA Section 7 consultation is completed. Notice of the effective date will be provided to the public and interested parties through publication in the Federal Register and through other outreach channels, including constituent phone calls and listserve notices. This rule also removes and reserves the smoothhound shark regulations in the Code of Federal Regulations. These sections will be returned, with amendments as needed, in a final rule that implements both the smoothhound shark sections of the Shark Conservation Act and any requirements of the Section 7

consultation regarding smoothhound sharks.

Classification

The NMFS AA has determined that this final action is necessary for the conservation and management of the HMS fishery, and that it is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. This action does not amend prior regulations, but merely provides updated information on the anticipated timing of future rulemaking to implement Amendment 3. Indeed, NMFS is not proposing any particular rulemaking action upon which the public could comment, but is instead delaying the anticipated effective date of a regulation to allow NMFS to assess the impact of the 2010 Shark Conservation Act on the original rulemaking. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Because prior notice and opportunity for public comment are

not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Permits, Quota, Smoothhound Shark.

Dated: November 7, 2011

Samuel D. Rauch III,
Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.
§ 635.2 [Amended]

2. In § 635.2, the definition of "smoothhound shark" is removed.

§ 635.4 [Amended]

3. In § 635.4, paragraph (e)(4) is removed and reserved.

§ 635.20 [Amended]

4. In § 635.20, paragraph (e)(4) is removed and reserved.

§ 635.22 [Amended]

5. In § 635.22, paragraph (c)(6) is removed and reserved.

§ 635.27 [Amended]

6. In § 635.27, paragraphs (b)(1)(vii) and (b)(2)(iv) are removed and reserved.

APPENDIX A to Part 635 [Amended]

7. In Table 1 of Appendix A to part 635, the heading and text for the entry E is removed and reserved.

[FR Doc. 2011-29180 Filed 11/09/2011 at 8:45 am;

Publication Date: 11/10/2011]